

February 10, 1992
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSAL TO PLACE ALCOHOL BAN ON JUNE 1992
BALLOT/ITEM 402(D) ON FEBRUARY 10, 1992 DOCKET

On February 3, 1992, the City Council directed the City Attorney to provide a written opinion as to the binding effect of a previously adopted resolution. Specifically, on July 1, 1991 the Council passed Resolution No. R-278233 which stated in part that the Council "hereby declares its intent to place the issue of the scope of an alcohol ban in certain City parks and beaches on the June 2, 1992 ballot."

The Council's present concern is whether it is bound by that previous resolution to place an alcohol ban on the June 2, 1992 ballot. Our answer is that it is not.

The language of the prior resolution clearly states that the Council declares its intent only to place a measure on the June 1992 ballot, and that language is not binding. A statement of intent in a resolution can be changed at any time. Unless otherwise specified by state or local law, the general rule is that "a resolution ordinarily is an act of a special or a temporary character, not prescribing a permanent rule of government but being declaratory of the will or opinion of the municipality in a given matter." Shepard's Ordinance Law Annotations, Vol. 3A, sec. 3, 354. A resolution, as opposed to an ordinance, is "simply an expression of opinion or mind or policy concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality All acts that are done by a municipal corporation in its ministerial capacity and for a temporary purpose may be put in the form of resolutions." McQuillin Mun. Corp., section 15.02 (3rd edition). Further, "it is clear that a council can rescind a resolution passed by a former council Power conferred upon a council to reconsider its prior action is a privilege which the council, in its discretion, may exercise or refrain from exercising." McQuillin Mun. Corp., section 13.49 (3rd edition).

An expression of intent on a July 1991 resolution to place an alcohol ban on the June 2, 1992 ballot is not in the nature of a requirement and does not bind the present Council to do so

at this time.

Respectfully

submitted,

JOHN W. WITT
City Attorney

MKJ:mb(043.1)
RC-92-14